

1-1 72

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
MRS. FRANK JAROSE,)
)
Appellant,)
)
vs.)
)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY,)
)
Respondent,)
)
LYNN A. KRIEGEL,)
)
Intervenor.)

PCHB No. 79

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being a denial of a flood control zone construction permit; having come on regularly for hearing before the Pollution Control Hearings Board on the 28th day of September, 1973, at Lacey, Washington; and appellant Mrs. Frank Jarose appearing pro se and respondent State of Washington, Department of Ecology, appearing through its attorney, Wick Dufford and intervenor, Lynn A. Kriegel did not participate; and Board members present at the hearing being Walt Woodward (presiding),

1 Mary Ellen McCaffree and William A. Gissberg; and the Board having
2 considered the sworn testimony, exhibits, records and files herein
3 and having entered on the 7th day of November, 1973, its proposed
4 Findings of Fact, Conclusions of Law and Order; and the Board having
5 served said proposed Findings, Conclusions and Order upon all parties
6 herein by certified mail, return receipt requested and twenty days
7 having elapsed from said service; and

8 The Board having received no exceptions to said proposed Findings,
9 Conclusions and Order; and the Board being fully advised in the
10 premises; now therefore,

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
12 Findings of Fact, Conclusions of Law and Order, dated the 7th day of
13 November, 1973, and incorporated by this reference herein and attached
14 hereto as Exhibit A, are adopted and hereby entered as the Board's
15 Final Findings of Fact, Conclusions of Law and Order herein.

16 DONE at Lacey, Washington, this 26th day of December, 1973.

17 POLLUTION CONTROL HEARINGS BOARD

18
19 Walt Woodward
20 WALT WOODWARD, Chairman

21 W. A. Gissberg
22 W. A. GISSBERG, Member

23
24 Mary Ellen McCaffree
25 MARY ELLEN McCAFFREE, Member

26 FINAL ORDER
27

1 Richard Reinertsen, Olympia court reporter, reported the proceedings.

2 Witnesses were sworn and testified. Exhibits were admitted,
3 including two plats submitted by appellant during a post-hearing period
4 approved by the Board for that purpose.

5 From testimony heard and exhibits examined, the Pollution Control
6 Hearings Board makes these

7 FINDINGS OF FACT

8 I.

9 Appellant in 1968 purchased a parcel of land on Kinkade Island in
10 the Dungeness River, Clallam County, with the intent, at that time, of
11 using it as the site for a home for her retirement. In 1971, she
12 prepared to sell the property to intervenor who desired to build a
13 summer home on it.

14 II.

15 On September 2, 1970, and pursuant to RCW 86.16, respondent began
16 notice of its intent to establish Dungeness Flood Control Zone No. 17.
17 The zone included appellant's property. Respondent caused legal
18 publication once a week for three consecutive weeks in a daily
19 newspaper of general circulation in Clallam County of a notice of
20 intent to establish the aforesaid zone. The zone was established by
21 respondent on December 4, 1970.

22 III.

23 Intervenor, on November 9, 1971, applied to respondent for a flood
24 control zone construction permit for a permanent structure for human
25 habitation on the property in question in this matter. On December 15,
26 1971, respondent denied the permit. That denial is the subject of this

27 FINDINGS OF FACT,

CONCLUSIONS AND ORDER

1 appeal.

2 IV.

3 Appellant, not a reader of the newspaper used by respondent for
4 its notice of intent to establish the above mentioned zone, a resident
5 of Seattle, King County, and a frequent visitor to South Carolina,
6 contends she was given no notice of the intent to establish the zone.
7 She contends intervenor decided not to purchase her property because
8 intervenor was denied a permit to build a summer home on the property.

9 V.

10 Appellant, contending her property was platted of record prior
11 to August 15, 1966, was given, at the conclusion of this hearing, until
12 October 15, 1973, to submit proof of this. On October 9, 1973,
13 appellant filed with the Board two drawings showing that an engineer,
14 on August 17, 1965, made a survey of properties on Kinkade Island,
15 including the parcel owned by appellant, but there is no showing that
16 the plats ever were filed of record in Clallam County or ever were
17 part of a subdivision approved by the Clallam County Commissioners.

18 VI.

19 Respondent, in denying the permit, found that appellant's property
20 was located in a floodway portion of Dungeness Flood Control Zone
21 No. 17 and "subject to flooding during a major flood with high velocity
22 flow occurring over the property due to the steep gradient of the
23 river."

24 From these findings, the Pollution Control Hearings Board comes
25 to these:

26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER

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24 From these findings, the Pollution Control Hearings Board comes
25 to these:

26 FINDINGS OF FACT,
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CONCLUSIONS OF LAW

I.

RCW 86.16.020 gives respondent authority by regulatory orders to designate flood control zones and to regulate construction therein by issuance of permits, all to "the security of life, health and property against damage by flood waters." RCW 86.16.067 requires respondent to give notice of intent by publication in a newspaper of general circulation within the affected county for three consecutive weekly issues.

II.

Although appellant is to be believed when she testified that she, personally, had no knowledge of the formation of Dungeness Flood Control Zone No. 17, it must be seen from Conclusion I and Finding of Fact II that respondent gave the notice required by statute. That this notice was not seen by appellant is unfortunate. But to require respondent to give personal notice to every owner of a parcel of land in a large flood zone is not a realistic demand which, obviously the Legislature did not impose on respondent.

III.

WAC 508-60-101(3) defines a floodway and WAC 508-60-040 forbids the issuance of construction permits for structures in a floodway for "human habitation of a permanent nature." A summer home, such as sought in the instant matter, is a structure of permanency; that is, it is not readily removable, as a mobile home would be.

IV.

RCW 86.16.095 provides exemption from the necessity of a construction permit for property within an approved plat of record prior to

1 August 15, 1966. Appellant's property was surveyed, but there is no
2 showing that the plat was recorded.

3 V.

4 From the above, it is clear that respondent legally established
5 Dungeness Flood Control Zone No. 17, properly found that appellant's
6 property is in a floodway, legally was correct in denying a permit for
7 a permanent human habitation structure and that appellant's property
8 is not entitled to an exception.

9 Therefore, the Pollution Control Hearings Board issues this

10 ORDER

11 The appeal is denied.

12 DONE at Lacey, Washington this 7th day of November, 1973.

13 POLLUTION CONTROL HEARINGS BOARD

14
15 Walt Woodward
16 WALT WOODWARD, Chairman

17 W. A. Gissberg
18 W. A. GISSBERG, Member

19 Mary Ellen McCaffree
20 MARY ELLEN McCAFFREE, Member
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